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HOUSE BILL 372

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Manuel G. Herrera

FOR THE RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE

AN ACT

RELATING TO THE ENVIRONMENT; AMENDING THE AIR QUALITY CONTROL ACT TO PROVIDE FOR STATE OPERATING PERMIT CONDITIONS THAT ARE CONSISTENT WITH AND NO MORE STRINGENT THAN FEDERAL REGULATIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 74-2-7 NMSA 1978 (being Laws 1972, Chapter 51, Section 4, as amended) is amended to read:

"74-2-7. PERMITS--PERMIT APPEALS TO THE ENVIRONMENTAL IMPROVEMENT BOARD OR THE LOCAL BOARD--PERMIT FEES.--

A. By regulation, the environmental improvement board or the local board shall require:

(1) a person intending to construct or modify any source, except as otherwise specifically provided by regulation, to obtain a construction permit from the department or the local agency prior to ~~such~~ the construction or

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1 modification; and

2 (2) a person intending to operate any source
3 for which an operating permit is required by the 1990
4 amendments to the federal act, except as otherwise specifically
5 provided by regulation, to obtain an operating permit from the
6 department or the local agency. The regulations applicable to
7 operating permits shall be consistent with, but no more
8 stringent than, operating permit regulations of the United
9 States environmental protection agency.

10 B. Regulations adopted by the environmental
11 improvement board or the local board shall include at least the
12 following provisions:

13 (1) requirements for the submission of
14 relevant information, including information the department or
15 the local agency deems necessary to determine that regulations
16 and standards under the Air Quality Control Act or the federal
17 act will not be violated;

18 (2) specification of the deadlines for
19 processing permit applications; provided that the deadline for
20 a final decision by the department or the local agency on a
21 construction permit application may not exceed:

22 (a) ninety days after the application is
23 determined to be administratively complete, if the application
24 is not subject to requirements for prevention of significant
25 deterioration, unless the secretary or the director grants an

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1 extension not to exceed ninety days for good cause, including
2 the need to have public hearings; or

3 (b) one hundred eighty days after the
4 application is determined to be administratively complete, if
5 the application is subject to requirements for prevention of
6 significant deterioration, unless the secretary or the director
7 grants an extension not to exceed ninety days for good cause,
8 including the need to have public hearings;

9 (3) that if the department or local agency
10 fails to take final action on a construction permit application
11 within the deadlines specified in Paragraph (2) of this
12 subsection, the department or local agency shall notify the
13 applicant in writing that an extension of time is required to
14 process the application and specify in detail the grounds for
15 the extension;

16 (4) a description of elements required before
17 the department or local agency shall deem an application
18 administratively complete;

19 (5) specification of the public notice,
20 comment period and public hearing, if any, required prior to
21 the issuance of a permit; provided that the permit regulations
22 adopted:

23 (a) by the environmental improvement
24 board shall include provisions governing notice to nearby
25 states; and

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1 (b) by any local board shall include
2 provisions requiring that notice be given to the department of
3 all permit applications by any source that emits, or has a
4 potential emission rate of, one hundred tons per year or more
5 of any regulated air contaminant, including any source of
6 fugitive emissions of each regulated air contaminant, at least
7 sixty days prior to the date on which construction or major
8 modification is to commence;

9 (6) a schedule of construction permit fees
10 sufficient to cover the reasonable costs of:

11 (a) reviewing and acting upon any
12 application for such permit; and

13 (b) implementing and enforcing the terms
14 and conditions of the permit, excluding any court costs or
15 other costs associated with an enforcement action;

16 (7) a schedule of emission fees consistent
17 with the provisions of Section 502(b)(3) of the 1990 amendments
18 to the federal act;

19 (8) a method for accelerated permit processing
20 that may be requested at the sole discretion of the applicant
21 at the time the applicant submits a construction permit
22 application and that:

23 (a) allows the department or local
24 agency to contract with qualified outside firms to assist the
25 department or local agency in its accelerated review of the

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1 construction permit application; provided that the department
2 or local agency can contract with a qualified firm that does
3 not have a conflict of interest; and

4 (b) establishes a process for the
5 department or local agency to account for the expenditure of
6 the accelerated permit processing fees;

7 (9) allowance for additional permit
8 application fees, sufficient to cover the reasonable costs of
9 an accelerated permit application review process. Before the
10 applicant is notified that the permit application has been
11 determined to be complete, the department or local agency shall
12 give the applicant a reasonable estimate of costs of an
13 accelerated permit application review process;

14 (10) specification of the maximum length of
15 time for which a permit shall be valid; provided that for an
16 operating permit ~~[such]~~ the period may not exceed five years;
17 and

18 (11) for an operating permit only:

19 (a) provisions consistent with Sections
20 502(b) and 505(b) of the federal act providing: 1) notice to
21 and review and comment by the United States environmental
22 protection agency; and 2) that if the department or local
23 agency receives notice of objection from the United States
24 environmental protection agency before the operating permit is
25 issued, the department or the local agency shall not issue the

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1 permit unless it is revised and issued under Section 505(c) of
2 the federal act;

3 (b) provisions governing renewal of the
4 operating permit; and

5 (c) specification of the conditions
6 under which the operating permit may be terminated, modified or
7 revoked and reissued prior to the expiration of the term of the
8 operating permit.

9 C. The department or the local agency may deny any
10 application for:

11 (1) a construction permit if it appears that
12 the construction or modification:

13 (a) will not meet applicable standards,
14 rules or requirements of the Air Quality Control Act or the
15 federal act;

16 (b) will cause or contribute to air
17 contaminant levels in excess of a national or state standard
18 or, within the boundaries of a local authority, applicable
19 local ambient air quality standards; or

20 (c) will violate any other provision of
21 the Air Quality Control Act or the federal act; and

22 (2) an operating permit if the source will not
23 meet the applicable standards, rules or requirements pursuant
24 to the Air Quality Control Act or the federal act.

25 D. The department or the local agency may specify

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1 conditions to any permit granted under this section, including:

2 (1) for a construction permit:

3 (a) a requirement that [~~such~~] the source
4 install and operate control technology, determined on a case-
5 by-case basis, sufficient to meet the standards, rules and
6 requirements of the Air Quality Control Act and the federal
7 act;

8 (b) individual emission limits,
9 determined on a case-by-case basis, but only as restrictive as
10 necessary to meet the requirements of the Air Quality Control
11 Act and the federal act or the emission rate specified in the
12 permit application, whichever is more stringent;

13 (c) compliance with applicable federal
14 standards of performance;

15 (d) reasonable restrictions and
16 limitations not relating to emission limits or emission rates;
17 or

18 (e) any combination of the conditions
19 listed in this paragraph; and

20 (2) for an operating permit, terms and
21 conditions sufficient to ensure compliance with the applicable
22 standards, rules and requirements pursuant to the Air Quality
23 Control Act and the federal act.

24 E. This section does not authorize the department
25 or the local agency to require the use of machinery, devices or

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1 equipment from a particular manufacturer if the federal
2 standards of performance, state regulations and permit
3 conditions may be met by machinery, devices or equipment
4 otherwise available.

5 F. The issuance of a permit does not relieve any
6 person from the responsibility of complying with the provisions
7 of the Air Quality Control Act and any applicable regulations
8 of the environmental improvement board or the local board. Any
9 conditions placed upon a permit by the department or the local
10 agency shall be enforceable to the same extent as a regulation
11 of its board.

12 G. A person who participated in a permitting action
13 before the department or the local agency shall be notified by
14 the department or the local agency of the action taken and the
15 reasons for the action. Notification of the applicant shall be
16 by certified mail.

17 H. A person who participated in a permitting action
18 before the department or the local agency and who is adversely
19 affected by ~~[such]~~ the permitting action may file a petition
20 for hearing before the environmental improvement board or the
21 local board. The petition shall be made in writing to the
22 environmental improvement board or the local board within
23 thirty days from the date notice is given of the department's
24 or the local agency's action. Unless a timely petition for
25 hearing is made, the decision of the department or the local

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1 agency shall be final.

2 I. If a timely petition for hearing is made, the
3 environmental improvement board or the local board shall hold a
4 hearing within sixty days after receipt of the petition. The
5 environmental improvement board or the local board shall notify
6 the petitioner and the applicant or permittee, if other than
7 the petitioner, by certified mail of the date, time and place
8 of the hearing. If the subject of the petition is a permitting
9 action deemed by the environmental improvement board or the
10 local board to substantially affect the public interest, the
11 environmental improvement board or the local board shall ensure
12 that the public receives notice of the date, time and place of
13 the hearing. The public in such circumstances shall also be
14 given a reasonable opportunity to submit data, views or
15 arguments orally or in writing and to examine witnesses
16 testifying at the hearing. Any person submitting data, views
17 or arguments orally or in writing shall be subject to
18 examination at the hearing.

19 J. The environmental improvement board or the local
20 board may designate a hearing officer to take evidence in the
21 hearing. All hearings shall be recorded.

22 K. The burden of proof shall be upon the
23 petitioner. Based upon the evidence presented at the hearing,
24 the environmental improvement board or the local board shall
25 sustain, modify or reverse the action of the department or the

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1 local agency respectively.

2 L. Notwithstanding any other provision of law and
3 subject to the provisions of Section 74-2-4 NMSA 1978, a final
4 decision on a permit by the department, the environmental
5 improvement board, the local agency, the local board or the
6 court of appeals that a source will or will not meet applicable
7 local, state and federal air pollution standards and
8 regulations shall be conclusive and is binding on every other
9 state agency and as an issue before any other state agency
10 shall be deemed resolved in accordance with that final
11 decision.

12 M Subject to the provisions of Section 74-2-4 NMSA
13 1978, if the local board has adopted a permit regulation
14 pursuant to this section, persons constructing or modifying any
15 source within the boundaries of the local authority shall
16 obtain a permit from the local agency and not from the
17 department.

18 N. Fees collected pursuant to this section shall be
19 deposited in:

20 (1) the state air quality permit fund created
21 by Section 74-2-15 NMSA 1978 if collected by the department; or

22 (2) a fund created pursuant to Section
23 74-2-16 NMSA 1978 if collected by a local agency pursuant to a
24 permit regulation adopted by the local board pursuant to this
25 section. "

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